



CTED | Community, Trade and Economic Development

Grant to

The City of Seattle

Through
the

Justice Assistance Grant
Special Emphasis Gang Initiative Program

For

To provide U.S. Department of Justice, Bureau of Justice Assistance funding to units of local government to recover or retain criminal justice related jobs, or to improve the operations of the criminal justice system.

Under the American Recovery and Reinvestment Act (ARRA) of 2009

Start date: July 1, 2009



TABLE OF CONTENTS

Special Terms and Conditions	1
Face Sheet	1
1. Acknowledgement of Federal Funding	2
2. Grant Management	2
3. Compensation	2
4. Billing Procedures and Payment	2
5. Insurance	3
6. Order of Precedence	4
General Terms and Conditions	5
1. Definitions	5
2. All Writings Contained Herein	5
3. Amendments	5
4. Americans with Disabilities Act (ADA)	5
5. Approval	5
6. Assignment	6
7. Attorney's Fees	6
8. Audit	6
9. Certification Regarding Debarment, Suspension or Ineligibility or Ineligibility and Voluntary Exclusion	7
10. Confidentiality/Safeguarding of Information	8
11. Conformance	8
12. Copyright Provisions	9
13. Disallowed Costs	9
14. Disputes	9
15. Duplicate Payment	10
16. Equal Opportunity Treatment for Faith Based Organizations	10
17. Ethics / Conflicts of Interest	10
18. Governing Law and Venue	10
19. Indemnification	10
20. Independent Capacity of the Grantee	10
21. Industrial Insurance Coverage	11
22. Laws	11
23. Licensing, Accreditation and Registration	13
24. Limitation of Authority	13
25. Local Public Transportation Coordination	13
26. Noncompliance With Nondiscrimination Laws	13
27. Political Activities	13
28. Procurement Standards for Federally Funded Programs	13
29. Prohibition Against Payment of Bonus or Commission	14
30. Publicity	14
31. Recapture	14
32. Records Maintenance	15
33. Registration With Department of Revenue	15
34. Right of Inspection	15
35. Savings	15

36.	Severability	15
37.	Subgranting	15
38.	Survival.....	16
39.	Taxes.....	16
40.	Termination for Cause/Suspension	16
41.	Termination for Convenience	16
42.	Termination Procedures.....	17
43.	Waiver	17
Attachment A	Scope of Work	18
Attachment B	Budget	19
Attachment C	Additional Provisions Under the American Recovery and..... Reinvestment Act of 2009, Public Law 111-5	20

FACE SHEET

Grant Number: F09-34721-403

**Washington State Department of Community, Trade and Economic Development
Community Services Division
Safe and Drug-Free Communities Unit
ARRA'09 JAG GANG INITIATIVE**

1. Contractor's Name and Address: City of Seattle 610 5th Avenue P.O. Box 34986 Seattle, WA 98124-4986		2. Contractor Doing Business As (Optional) 	
3. Contractor Representative Ronald Wilson Lieutenant 2066845547 2066845489 Ronald.Wilson@seattle.gov		4. CTED Representative Harvey Queen Program Manager (360) 725-3034 (360) 586-0489 P.O. Box 42525 128 10th Avenue SE Olympia, WA 98504-4000	
5. Contract Amount \$ 764,846.00	6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date July 1, 2009	8. End Date June 30, 2010
9. Federal Funds (as applicable) <div style="display: flex; justify-content: space-between;"> <u>Federal Agency</u> Department of Justice <u>CFDA Number</u> 16.803 </div>			
10. Contract Purpose To provide U.S. Department of Justice, Bureau of Justice Assistance funding to units of local government to recover or retain criminal justice related jobs, or to improve the operations of the criminal justice system.			
CTED, defined as the Department of Community, Trade and Economic Development, and the Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment "A" Statement of Work, Attachment "B" – Budget, Attachment "C" – Additional Provisions Under the American Recovery And Reinvestment Act of 2009 Public Law 111-5, Grantee's Application for funding under this program, and the Grantee's Certifications and Assurances required by CTED as pre-requisites for execution of this Agreement.			
FOR THE CITY <hr/> Name: <hr/> Title: <hr/> Date: <hr/>		FOR THE DEPARTMENT <hr/> Dan McConnon, Assistant Director Community Services Division <hr/> Date: <hr/> APPROVED AS TO FORM ONLY <div style="text-align: right;">Sandra Adix</div> <hr/> Sandra Adix Assistant Attorney General <hr/> May 8, 2009 <hr/> Date: <hr/>	

SPECIAL TERMS AND CONDITIONS

1. ACKNOWLEDGEMENT OF FEDERAL FUNDING

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

“This project was supported by Grant No. 2009-SU-B9-0028 awarded by United States Department of Justice Bureau of Justice Assistance. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the United States Department of Justice. Grant funds are administered by the Safe and Drug Free Communities Unit, Community Services Division, Washington State Department of Community, Trade and Economic Development.”

CTED, as a recipient of American Recovery and Reinvestment Act (hereinafter "Act") funds is legally obligated and must meet accountability and reporting requirements under the Act. The state of Washington or the federal funding source may also identify additional requirements or other changes in requirements. Such requirements may be in statute, regulation, policy, or procedure. CTED is responsible for incorporating these requirements into the performance of this Grant. Although all requirements have not yet been identified, please expect additional reporting requirements, to include, but not limited to, performance outcomes such as created or retained jobs.

2. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for CTED and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

3. COMPENSATION

CTED shall pay an amount not to exceed the amount specified in block five of this Agreement's facesheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

4. BILLING PROCEDURES AND PAYMENT

CTED will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for CTED on at least a quarterly basis, though not more often than monthly.

The Grantee will utilize only invoice forms provided by CTED to request reimbursement under this grant.

If the Grantee is past due in submitting the required quarterly activity reports, CTED shall withhold payment of all invoices until the required reports are received.

Payment shall be considered timely if made by CTED within thirty (30) calendar days after receipt of properly completed invoices or receipt of past due activity reports, whichever is later. Payment shall be sent to the address designated by the Grantee.

CTED may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by CTED.

SPECIAL TERMS AND CONDITIONS

Duplication of Billed Costs

The Grantee shall not bill CTED for services performed under this Agreement, and CTED shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

5. **INSURANCE**

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subgrantee, or agents of either, while performing under the terms of this Grant.

If the Grantee utilizes a regional or state sponsored risk pool, or is self indemnified, the Grantee will notify CTED's representative of that fact within fifteen (15) calendar days of the Grant start date.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give CTED thirty (30) calendar days advance notice of any insurance cancellation or modification.

The Grantee shall submit to CTED within fifteen (15) calendar days of the Grant start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subgrants.

Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Grantee or its Subgrantee, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under Grant to the Grantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$100,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Grantor as beneficiary.

SPECIAL TERMS AND CONDITIONS

- B.** Subgrantees that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the Grantee as beneficiary.
- C.** The Grantee shall provide, at CTED's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that CTED will be provided thirty (30) days advance written notice of cancellation.

6. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- Attachment 1-Certifications and Assurances for American Recovery and Reinvestment Act of 2009
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Additional Provisions Under the American Recovery and Reinvestment Act of 2009, Public Law 111-5
- Grantee's application for Justice Assistance Grant funding for the activities supported by this Agreement
- Grantee's certifications and assurances provided as a prerequisite for execution of this Agreement
- General Terms and Conditions

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "Cognizant State Agency" shall mean the state agency from which the sub-recipient receives federal financial assistance. If funds are received from more than one state agency, the cognizant state agency shall be the agency that contributes the largest portion of federal financial assistance to the sub-recipient.
- C. "CTED" shall mean the Department of Community, Trade and Economic Development.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subgrantee" shall mean one not an employee of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee" and "subgrantees" means subgrantee(s) in any tier.
- H. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- I. "Vendor" is an entity that agrees to provide the amount and kind of services requested by the Department; provides services under the Grant only to those beneficiaries individually determined to be eligible by the Department and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

2. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

3. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

5. APPROVAL

This Grant shall be subject to the written approval of CTED's authorized representative and shall not be binding until so approved. The Grant may be altered, amended, or waived only by a written amendment executed by both parties.

GENERAL TERMS AND CONDITIONS

6. **ASSIGNMENT**

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of CTED.

7. **ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorneys fees and costs.

8. **AUDIT**

A. General Requirements

Grantees are to procure audit services based on the following guidelines.

The Grantee shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subgrantees also maintain auditable records.

The Grantee is responsible for any audit exceptions incurred by its own organization or that of its Subgrantees.

CTED reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

As applicable, Grantee's required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Grantee must respond to CTED requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations

Grantees expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Grantees to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. The Schedule of State Financial Assistance must be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number
- Grantor contract number
- Total award amount including amendments (total grant award)
- Beginning balance
- Current year revenues
- Current year expenditures
- Ending balance
- Program total

GENERAL TERMS AND CONDITIONS

If the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Grantee in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Grantee shall include the above audit requirements in any subgrants.

In any case, the Grantee's financial records must be available for review by CTED.

C. Documentation Requirements

The Grantee must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Grantee's fiscal year(s) to:

Department of Community Trade and Economic Development
ATTN: Audit Review and Resolution Office
906 Columbia Street SW, Fifth Floor
PO Box 48300
Olympia WA 98504-8300

In addition to sending a copy of the audit, when applicable, the Grantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by CTED.
- Copy of the Management Letter.

9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- 1. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:**
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - b. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and
 - d. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, state, or local) terminated for cause of default.
- 2. Where the Grantee is unable to certify to any of the statements in this grant, the Grantee shall attach an explanation to this Grant.**
- 3. The Grantee agrees by signing this grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by CTED.**
- 4. The Grantee further agrees by signing this grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:**

GENERAL TERMS AND CONDITIONS

LOWER TIER COVERED TRANSACTIONS

- a) The lower tier grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - b) Where the lower tier grantee is unable to certify to any of the statements in this Grant, such grantee shall attach an explanation to this Grant.
5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact CTED for assistance in obtaining a copy of these regulations.

10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
- 1. All material provided to the Grantee by CTED that is designated as "confidential" by CTED;
 - 2. All material produced by the Grantee that is designated as "confidential" by CTED; and
 - 3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of CTED or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide CTED with its policies and procedures on confidentiality. CTED may require changes to such policies and procedures as they apply to this Grant whenever CTED reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by CTED. Upon request, the Grantee shall immediately return to CTED any Confidential Information that CTED reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Grantee shall notify CTED within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

11. CONFORMANCE

If any provision of this Grant violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

GENERAL TERMS AND CONDITIONS

12. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by CTED. CTED shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to CTED effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to CTED a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to CTED.

The Grantee shall exert all reasonable effort to advise CTED, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide CTED with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. CTED shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

13. DISALLOWED COSTS

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subgrantees.

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with CTED's Director, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Grant number; and
- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

GENERAL TERMS AND CONDITIONS

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

15. DUPLICATE PAYMENT

The Grantee certifies that work to be performed under this Grant does not duplicate any work to be charged against any other Grant, subgrant, or other source.

16. EQUAL OPPORTUNITY TREATMENT FOR FAITH BASED ORGANIZATIONS

The Grantee agrees to comply with the applicable requirements of 28 CFR Part 38, the Department of Justice regulation.

17. ETHICS/CONFLICTS OF INTEREST

In performing under this Grant, the Grantee shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

18. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

19. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, CTED, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Grant. The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by the Grantee's agents, employees, representatives, or any subgrantee or its agents, employees, or representatives.

The Grantee's obligation to indemnify, defend, and hold harmless shall not be eliminated or reduced by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subgrants shall include a comprehensive indemnification clause holding harmless the Grantee, CTED, the state of Washington, its officers, employees and authorized agents.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

20. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or CTED. The Grantee will not hold itself out as or claim to be an officer or employee of CTED or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

GENERAL TERMS AND CONDITIONS

21. **INDUSTRIAL INSURANCE COVERAGE**

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, CTED may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. CTED may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by CTED under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

22. **LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

United States Laws, Regulations and Circulars (Federal)

A. Audits

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

B. Labor and Safety Standards

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

C. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90
Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. Section 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

GENERAL TERMS AND CONDITIONS

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968 12 USC 17001u (See 24 CFR 570.607(b)).

D. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122, (if the Grantee is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102, (if the Grantee is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

E. Other

Anti-Kickback Act, 18 U.S.C. 874, 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Internal Revenue Service Rules, August 31, 1990.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352. (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Grantees who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

~~Nondiscrimination and Equal Opportunity, 24 CFR part 5.105(a).~~

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

F. Privacy

Privacy Act of 1974, 5 U.S.C. 552(a).

Washington State Laws and Regulations

A. Affirmative action, RCW 41.06.020 (11).

B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.

C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.

D. Discrimination-human rights commission, Chapter 49.60 RCW.

E. Ethics in public service, Chapter 42.52 RCW.

GENERAL TERMS AND CONDITIONS

- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

23. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

24. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.

25. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Grantee shall participate in local public transportation forums and implement strategies designed to ensure access to services.

26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Grants with the state. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

27. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used under this Grant for working for or against ballot measures or for or against the candidacy of any person for public office.

28. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Grant.

The Grantee's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of Grants using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

GENERAL TERMS AND CONDITIONS

3. Minimum procedural requirements, as follows:

- a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - c. Positive efforts shall be made to use small and minority-owned businesses.
 - d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - e. Subgrants shall be made only with reasonable Subgrantees who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - f. Some form of price or cost analysis should be performed in connection with every procurement action.
 - g. Procurement records and files for purchases shall include all of the following:
 - 1) Grantees selection or rejection.
 - 2) The basis for the cost or price.
 - 3) Justification for lack of competitive bids if offers are not obtained.
 - h. A system for Grant administration to ensure Grantee conformance with terms, conditions and specifications of this Grant, and to ensure adequate and timely follow-up of all purchases.
4. Grantee and Subgrantees must receive prior approval from CTED for using funds from this Grant to enter into a sole source Grant or a Grant where only one bid or proposal is received when value of this Grant is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed Grants and any related procurement documents and justification for non-competitive procurement, if applicable.

29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

30. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or CTED's name is mentioned, or language used from which the connection with the state of Washington's or CTED's name may reasonably be inferred or implied, without the prior written consent of CTED.

31. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, CTED reserves the right to recapture funds in an amount to compensate CTED for the noncompliance in addition to any other remedies available at law or in equity.

GENERAL TERMS AND CONDITIONS

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by CTED. In the alternative, CTED may recapture such funds from payments due under this Grant.

32. RECORDS MAINTENANCE

The Grantee shall maintain all books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant. Grantee shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

33. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

34. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by CTED, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

35. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, CTED may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

36. SEVERABILITY

If any provision of this Grant or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Grant that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Grant and to this end the provisions of this Grant are declared to be severable.

37. SUBGRANTING

The Grantee may only subgrant work contemplated under this Grant if it obtains the prior written approval of CTED.

If CTED approves subgranting, the Grantee shall maintain written procedures related to subgranting, as well as copies of all subgrants and records related to subgrants. For cause, CTED in writing may: (a) require the Grantee to amend its subgranting procedures as they relate to this Grant; (b) prohibit the Grantee from subgranting with a particular person or entity; or (c) require the Grantee to rescind or amend a subgrant.

GENERAL TERMS AND CONDITIONS

Every subgrant shall bind the Subgrantee to follow all applicable terms of this Grant. The Grantee is responsible to CTED if the Subgrantee fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subgrantee to assure fiscal conditions of this Grant. In no event shall the existence of a subgrant operate to release or reduce the liability of the Grantee to CTED for any breach in the performance of the Grantee's duties.

Every subgrant shall include a term that CTED and the State of Washington are not liable for claims or damages arising from a Subgrantee's performance of the subgrant.

38. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

39. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

40. TERMINATION FOR CAUSE / SUSPENSION

In event CTED determines that the Grantee failed to comply with any term or condition of this Grant, CTED may terminate the Grant in whole or in part upon written notice to the Grantee. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, CTED upon written notice may allow the Grantee a specific period of time in which to correct the non-compliance. During the corrective-action time period, CTED may suspend further payment to the Grantee in whole or in part, or may restrict the Grantee's right to perform duties under this Grant. Failure by the Grantee to take timely corrective action shall allow CTED to terminate the Grant upon written notice to the Grantee.

"Termination for Cause" shall be deemed a "Termination for Convenience" when CTED determines that the Grantee did not fail to comply with the terms of the Grant or when CTED determines the failure was not caused by the Grantee's actions or negligence.

If the Grant is terminated for cause, the Grantee shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Grant and the replacement Grant, as well as all costs associated with entering into the replacement Grant (i.e., competitive bidding, mailing, advertising, and staff time).

41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant CTED may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, the Grantor shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

GENERAL TERMS AND CONDITIONS

42. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by CTED, the Grantee shall:

- A.** Stop work under the Grant on the date, and to the extent specified, in the notice;
- B.** Place no further orders or subgrants for materials, services, or facilities related to the Grant;
- C.** Assign to CTED all of the rights, title, and interest of the Grantee under the orders and subgrants so terminated, in which case CTED has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants. Any attempt by the Grantee to settle such claims must have the prior written approval of CTED; and
- D.** Preserve and transfer any materials, Grant deliverables and/or CTED property in the Grantee's possession as directed by CTED.

Upon termination of the Grant, CTED shall pay the Grantee for any service provided by the Grantee under the Grant prior to the date of termination. CTED may withhold any amount due as CTED reasonably determines is necessary to protect CTED against potential loss or liability resulting from the termination. The State shall pay any withheld amount to the Grantee if CTED later determines that loss or liability will not occur.

The rights and remedies of CTED under this section are in addition to any other rights and remedies provided under this Grant or otherwise provided under law.

43. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of CTED.

Scope of Work

The scope of work for this Agreement shall be all actions necessary or incidental to the implementation of the project as specified in the Proposal Narrative of the Grantee's application for Justice Assistance Grant funding for the activities supported by this Agreement.

Budget

The budget for this Agreement shall be the amount specified in Block 5 of this Agreement's facesheet.

BUDGET

The budget for this contract is as follows:

<u>Category of Expense</u>	<u>Amount</u>
Salaries	\$ 398,345
Benefits	\$ 112,272
Overtime	<u>\$ 254,229</u>
	\$ 764,846

The CONTRACTOR may shift up to \$5,000 of the total funds governed by this contract between categories of expense, provided that the shift not constitute a significant change of scope to the work performed.

**ADDITIONAL PROVISIONS UNDER THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
Public Law 111-5**

1. Recovery Act Reporting Requirements; Section 1512(c) of the Recovery Act

Grantee acknowledges and agrees that the American Recovery and Reinvestment Act of 2009, hereinafter "Recovery Act" places great emphasis on accountability and transparency in the use of taxpayer dollars. Among other things, it creates a new Recovery Accountability and Transparency Board and a new website -- Recovery.gov -- to provide information to the public, including access to detailed information on grants and contracts made with Recovery Act funds.

CTED, as a recipient of Recovery Act funds, must comply with the Recovery Act's extensive reporting requirements, including quarterly financial and programmatic reporting due within 10 calendar days after the end of each calendar quarter. CTED will require periodic reports from its sub-recipients in order to fulfill its reporting obligations. Grantees receiving Recovery Act funds may expect that a standard form(s) and/or reporting mechanism will be made available at a future date.

Grantee agrees to provide to CTED all reports, documentation, or other information, as may be required by CTED to meet reporting obligations under the Recovery Act. Grantee's receipt of funds is contingent on Grantee meeting the reporting requirements of Section 1512.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Grantees receiving Recovery Act funds should be aware that Recovery Act section 1512(c) provides:

Recipient Reports- Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

- (1) The total amount of recovery funds received from that agency;
- (2) The amount of recovery funds received that were expended or obligated to projects or activities; and
- (3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including:
 - (a) The name of the project or activity;
 - (b) A description of the project or activity;
 - (c) An evaluation of the completion status of the project or activity;
 - (d) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - (e) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.
- (4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

2. Section 1602 of the Recovery Act: Preference for Quick-Start Activities (if applicable)

Section 1602 of the Recovery Act provides:

In using funds made available in this Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit.

3. Section 1604 of the Recovery Act: Limit on Funds

Section 1604 of the Recovery Act provides:

None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

4. Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009

Section 1605 of the Recovery Act provides:

Use of American Iron, Steel, and Manufactured Goods.

(a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that:

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

Grantee shall comply with Section 1605 of the Recovery Act unless compliance has been waived by the Federal Agency providing the funds and when compliance with the Recovery Act does not conflict with an international trade agreement.

Grantee shall provide CTED with information and applicable supporting data as may be required by CTED, to support any request for waiver of compliance with Section 1605 of the Recovery Act.

Grants for the procurement of goods and services in the amount of \$528,000 or more and for constructions services in the amount of \$7,443,000 or more are covered by an international trade agreement and are therefore not subject to Section 1605.

If this grant involves an award of Recovery Act funds for construction, alteration, maintenance of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international trade agreements, the following provision applies:

(a) Definitions. As used in this award term and condition:

“Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been:

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

- (1) This award term and condition implements Section 1605 of the Recovery Act of 2009 by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.
- (2) This requirement does not apply to the material excepted by Federal Government.
- (3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal Government determines that:
 - (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

- (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—
 - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

- (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- (2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
- (3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.
- (d) **Data.** To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of Measure	Quantity	Cost (Dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed.]

[Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

5. Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009 – Davis-Bacon Act

All laborers and mechanics employed by grantees and subgrantees on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act, shall be paid wages at rates not less than those prevailing on projects of a character similar in

the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See U.S. Department of Labor, Wage and Hour Division website at <http://www.dol.gov/esa/whd/contracts/dbra.htm>. Wage determinations can be found at <http://www.wdol.gov>.

The Grantee shall include this provision and require this provision to be contained in all subgrants for work performed under this Grant.

The work performed by this Grant may also be subject to the State's prevailing wage laws, Chapter 39.12 RCW. The Grantee is advised to consult with the Washington State Department of Labor and Industries to determine the prevailing wages that must be paid.

6. Non-supplanting of State and Local Funds (if applicable -- consult the program solicitation and the special conditions in the award document)

Grantees must use federal funds to supplement existing State and local funds for program activities and must not replace (supplant) State or local funds that they have appropriated or allocated for the same purpose. Potential supplanting will be the subject of monitoring and audit. Violations may result in a range of penalties, including suspension of current and future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties. For additional guidance regarding supplanting, refer to the information provided at <http://www.ojp.usdoj.gov/recovery/supplantingguidance.htm>.

7. Protection of Whistleblowers

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct,) a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- Gross mismanagement of an agency contract or grant relating to covered funds;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or
- Violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.